

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DARIO MARTINEZ-CASTRO,

Petitioner,

v.

JASON BENNETT,

Respondent.

Case No. C23-256-JNW-MLP

ORDER

On May 17, 2023, the Court stayed this 28 U.S.C. § 2254 habeas action to allow Dario Martinez-Castro (“Petitioner”) to exhaust his state court remedies. (Dkt. # 16.) Petitioner’s state court proceedings have since concluded. (Dkt. # 17.) Petitioner now moves the Court to lift the stay and grant leave to file an amendment to his previously submitted habeas petition (“Petitioner’s Motion”). (*Id.* at 1.) Specifically, Petitioner seeks to raise an additional habeas ground for relief alleging that the trial court abused its discretion by failing to consider his youth as a mitigating factor at his sentencing. (*Id.* at 2-4.)

Respondent does not object to lifting the stay or to Petitioner’s request for leave to file an amended habeas petition. (Dkt. # 18 at 1.) However, Respondent requests 45 days to file his answer to Petitioner’s amended habeas petition. (*Id.* at 2.)

1 Having considered Petitioner's Motion, Respondent's lack of opposition, and the balance
2 of the record, the Court ORDERS:

3 (1) Petitioner's Motion (dkt. # 17) is GRANTED, and the stay (dkt. # 16) is lifted.

4 (2) Petitioner shall file an amended habeas petition within **thirty (30) days** of the
5 date of this Order containing his two previous habeas grounds for relief (dkt. # 11) and his
6 additional habeas ground for relief (dkt. # 17 at 2-4).

7 (3) Within **forty-five (45) days** of the filing of the amended habeas petition,
8 Respondent shall file and serve an answer in accordance with Rule 5 of the Rules Governing
9 Section 2254 Cases in United States District Courts. As part of such answer, Respondent shall
10 state whether Petitioner has exhausted available state remedies and whether an evidentiary
11 hearing is necessary. Respondent shall not file a dispositive motion in place of an answer without
12 first showing cause as to why an answer is inadequate. Respondent shall file the answer with the
13 Clerk of the Court and serve a copy of the answer on Petitioner.

14 The answer will be treated in accordance with LCR 7. Accordingly, on the face of the
15 answer, Respondent shall note it for consideration on the fourth Friday after filing. Petitioner
16 may file and serve a response not later than the Monday immediately preceding the Friday
17 designated for consideration of the matter, and Respondent may file and serve a reply not later
18 than the Friday designated for consideration.

19 (4) The Clerk is directed to reopen this case and to send Petitioner the appropriate
20 form so that he may file an amended habeas petition. The Clerk is further directed to send copies
21 of this Order to the parties and to the Honorable Jamal N. Whitehead.

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ORDER - 2

1 Dated this 18th day of August, 2023.

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4 MICHELLE L. PETERSON
5 United States Magistrate Judge
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